

No. _____

**United States Circuit Court
of Appeals
Ninth Circuit**

**Appeal from the District Court of the United
States for the District of Oregon**

**OREGON & CALIFORNIA RAILROAD
COMPANY, A CORPORATION, et al.,**

Defendants and Appellants

JOHN L. SNYDER, et al.,

Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, et al.,

Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA

Appellee

**TRANSCRIPT OF RECORD
IN SEVENTEEN VOLUMES
VOLUME I**

PAGES 1-50

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants

OREGON & CALIFORNIA R. R. CO., et al.:

**WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,**
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

**For Appellant—UNION TRUST COMPANY,
DOLPH, MALLORY, SIMON
& GEARIN,**
Portland, Oregon.
**MILLER, KING, LANE &
TRAFFORD, and
JOHN C. SPOONER,**
New York.

For Appellants—JNO. L. SNYDER, et al.:

A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, et al.:

**L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,**
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

**B. D. TOWNSEND,
F. C. RABB,**

Special Assistants to the
Attorney General.

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Be it remembered, that on the 25th day of May, 1908, there was duly filed in the Circuit Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit:

APRIL TERM, 1908

[BILL OF COMPLAINT]

**In the Circuit Court of the United States
For the District of Oregon**

NINTH JUDICIAL CIRCUIT.

UNITED STATES OF AMERICA,

Complainant,

vs.

**OREGON AND CALIFORNIA RAILROAD
COMPANY, SOUTHERN PACIFIC COM-
PANY, STEPHEN T. GAGE (individually
and as trustee), UNION TRUST COM-
PANY (individually and as trustee), JOHN L.
SNYDER, JULIUS F. PRAHL, ALBERT
E. THOMPSON, JAMES BARR, FRED
WITTE, W. A. ANDERSON, W. H. AN-
DERSON, O. M. ANDERSON, F. E. WIL-
LIAMS, PAUL BIRKENFELD, J. H.
LEWIS, FRANCIS S. WISER, W. E. AN-**

DERSON, ALBERT ARMS, JOSEPH A. MAXWELL, ISAAC McKAY, J. R. PETERSON, D. MacLAFFERTY, EDGAR MacLAFFERTY, V.V. McABOY, GEORGE C. MacLAFFERTY, GEORGE EDGAR MacLAFFERTY, E. L. MacLAFFERTY, B. N. MacLAFFERTY, ENOS M. FLUHRER, F. W. FLOETER, S. SHRYOCK, SIDNEY BEN SMITH, ORRIN J. LAWRENCE, ROBERT G. BALDERREE, OSCAR E. SMITH, EGBERT C. LAKE, C. W. SLOAT, JESSE F. HOLBROOK, A. E. HAUDENSCHILD, S. H. MONTGOMERY, W. A. NOLAND, JOHN H. HAGGETT, CHARLES W. MEAD, WILLIAM OTTERSTROM, ANGUS MacDONALD, JOHN T. MOAN, JOSEPH D. HADLEY, HENRY C. OTT, FRED L. FREEBING, WILLIAM CAIN, R. T. ALDRICH, JAMES C. O'NEILL, ALEXANDER FAUSKE, FRANCIS WIEST, CORDELIA MICHAEL, JOHN B. WIEST, CYRUS WIEST, JOHN WIEST, THOMAS MANLEY HILL, OTTO NELSON, JASPER L. HEWITT, B. L. PORTER, FRANK WELLS, C. P. WELLS, I. H. INGRAM, L. G. REEVES, W. W. WELLS, F. M. RHOADES, MARVIN MARTIN, and ROY W. MINKLER,

Defendants,

**To the Judges of the Circuit Court of the United
States for the District of Oregon:**

THE UNITED STATES OF AMERICA, by Charles J. Bonaparte, its Attorney General, presents this its Bill of Equity against Oregon and California Railroad Company, a citizen of the State of Oregon, Southern Pacific Company, a citizen of the State of Kentucky, Stephen T. Gage, a citizen of the State of California, and Union Trust Company, a citizen of the State of New York, and John L. Snyder, Julius F. Prah, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, S. Shryock, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschild, S. H. Montgomery, W. A. Noland, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Marvin Martin, all citizens of the State of Oregon, and Roy W.

Minkler, a citizen of the State of Washington.

Thereupon your Orator complains and says:

I.

The defendant Oregon and California Railroad Company, now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of Oregon, and a resident and citizen of said State.

The defendant Southern Pacific Company now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of Kentucky, and a resident and citizen of said last named State.

The defendant Stephen T. Gage is a resident and citizen of the City of San Francisco, in the State of California, and is sued in his own right, and also as sole surviving trustee under a certain deed of trust hereinafter described.

The defendant Union Trust Company now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of New York, and a resident and citizen of said last named State, and is sued in its own right, and also as trustee under a certain mortgage deed hereinafter described.

Each of the defendants John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis

S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock, is a resident and citizen of the County of Columbia in the State of Oregon.

Each of the defendants Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschild, S. H. Montgomery and W. A. Noland, is a resident and citizen of the County of Lane in the State of Oregon.

Each of the defendants John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich and James C. O'Neill is a resident and citizen of the County of Multnomah in the State of Oregon.

Each of the defendants Alexander Fauske, Francis Wiest, Sordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter and Frank Wells is a resident and citizen of the County of Clackamas in the State of Oregon.

Each of the defendants C. P. Wells, I. H. Ingram, L. G. Reeves and W. W. Wells is a resident and citizen of the County of Polk in the State of Oregon.

The defendant F. M. Rhoades is a resident and

citizen of the County of Douglas in the State of Oregon.

The defendant Marvin Martin is a resident and citizen of the County of Linn in the State of Oregon.

The defendant Roy W. Minkler is a resident and citizen of the County of Clarke in the State of Washington.

Certain of said defendants above named are described otherwise than by Christian name for the reason that the Christian name of each of said defendants is to your Orator unknown.

II.

On or about the twenty-fifth day of July, A. D. 1866, the Congress of the United States passed an Act entitled,

"An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,"

which said Act was approved and became operative upon said twenty-fifth day of July, A. D. 1866, and which said Act is in terms as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that the 'California and Oregon Railroad Company,' organized under an act of the State of California, to protect certain parties in and to a railroad survey, 'to connect Portland, in Oregon, with Marysville, in California,' approved April 6, 1863, and such company organized under the laws of Oregon as the Legislature of said state shall hereafter designate, be, and they are hereby, authorized and empowered to lay

out, locate, construct, finish and maintain a railroad and telegraph line between the City of Portland in Oregon, and the Central Pacific Railroad in California, in the manner following, to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said company) on the Central Pacific Railroad in the Sacramento Valley, in the State of California, and running thence northerly, through the Sacramento and Shasta valleys, to the northern boundary of the State of California; and the said Oregon company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the City of Portland, in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first-named company: *Provided*, That the company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the other company shall have likewise arrived at the same line, shall have the right, and the said company is hereby authorized, to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie, upon the terms mentioned in this act, until the said parts shall meet and connect, and the whole line of said railroad and telegraph shall be completed.

SEC. 2. *And be it further enacted*, That there be,

and hereby is, granted to the said companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections; and as soon as the said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified. The lands herein granted shall be applied to the building of said road within the States, respectively, wherein they are situated. And the sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when

sold: *Provided*, That bona-fide and actual settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement and occupation: *And provided also*, That settlers under the provisions of the homestead act, who comply with the terms and requirements of said act, shall be entitled, within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States, anything in this act to the contrary notwithstanding.

SEC. 3. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water, and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine-shops, switches, side tracks, turn-tables, water stations, or any other structures required in the construction and operating of said road.

SEC. 4. *And be it further enacted*, That whenever the said companies, or either of them, shall have twenty or more consecutive miles of any portion of said railroad

and telegraph line ready for the service contemplated by this act, the President of the United States shall appoint three commissioners, whose compensation shall be paid by said company, to examine the same, and if it shall appear that twenty consecutive miles of railroad and telegraph shall have been completed and equipped in all respects as required by this act, the said commissioners shall so report under oath to the President of the United States, and thereupon patents shall issue to said companies, or either of them, as the case may be, for the lands hereinbefore granted, to the extent of and coterminous with the completed section of said railroad and telegraph line as aforesaid; and from time to time, whenever twenty or more consecutive miles of the said road and telegraph shall be completed and equipped as aforesaid, patents shall in like manner issue upon the report of the said commissioners, and so on until the entire railroad and telegraph authorized by this act shall have been constructed, and the patents of the lands herein granted shall have been issued.

SEC. 5. *And be it further enacted*, That the grants aforesaid are made upon the condition that the said companies shall keep said railroad and telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit despatches by said telegraph line for the government of the United States, when required so to do by any department thereof, and that the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the

rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge and expense of the corporations or companies owning or operating the same, when so required by the government of the United States.

SEC. 6. *And be it further enacted*, That the said companies shall file their assent to this act in the Department of the Interior within one year after the passage hereof, and shall complete the first section of twenty miles of said railroad and telegraph within two years, and at least twenty miles in each year thereafter, and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and the said railroad shall be of the same gauge as the 'Central Pacific Railroad' of California, and be connected therewith.

SEC. 7. *And be it further enacted*, That the said companies named in this act are hereby required to operate and use the portions or parts of said railroad and telegraph mentioned in section one of this act for all purposes of transportation, travel and communication, so far as the government and public are concerned, as one connected and continuous line; and in such operation and use to afford and secure to each other equal advantages and facilities as to rates, time and transportation, without any discrimination whatever, on pain of forfeiting the full amount of damage sustained on

account of such discrimination, to be sued for and recovered in any court of the United States, or of any State, of competent jurisdiction.

SEC. 8. *And be it further enacted*, That in case the said companies shall fail to comply with the terms and conditions required, namely, by not filing their assent thereto as provided in section six of this act, or by not completing the same as provided in said section, this act shall be null and void, and all the lands not conveyed by patent to said company or companies, as the case may be, at the date of any such failure, shall revert to the United States. And in case the said road and telegraph line shall not be kept in repair and fit for use, after the same shall have been completed, Congress may pass an act to put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the United States, to repay all expenditures caused by the default and neglect of said companies or either of them, as the case may be, or may fix pecuniary responsibility, not exceeding the value of the lands granted by this act.

SEC. 9. *And be it further enacted*, That the said 'California and Oregon Railroad Company,' and the said 'Oregon Company' shall be governed by the provisions of the general railroad and telegraph laws of their respective States, as to the construction and management of the said railroad and telegraph line hereinbefore authorized, in all matters not provided for in this act. Wherever the word 'company' or 'companies' is used in this act it shall be construed to embrace the words

'their associates, successors and assigns,' the same as if the words had been inserted, or thereto annexed.

SEC. 10. *And be it further enacted*, That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, so much of the timber thereon as shall be required to construct said road over such mineral land is hereby granted to said companies; *Provided*, That the term 'mineral lands' shall not include lands containing coal and iron.

SEC. 11. *And be it further enacted*, That the said companies named in this act shall obtain the consent of the legislatures of their respective States, and be governed by the statutory regulations thereof in all matters pertaining to the right of way, wherever the said road and telegraph line shall not pass over or through the public lands of the United States.

SEC. 12. *And be it further enacted*, That Congress may at any time, having due regard for the rights of said California and Oregon railroad companies, add to, alter, amend, or repeal this act."

Said last described Act of Congress was amended by an Act of Congress approved June twenty-fifth, A. D. 1868, entitled, "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,'" which said amendatory act is in terms as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress

assembled, That section six of an act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-fifth, eighteen hundred and sixty-six, be so amended as to provide that instead of the times now fixed in said section, the first section of twenty miles of said railroad and telegraph shall be completed within eighteen months from the passage of this act, and at least twenty miles in each two years thereafter, and the whole on or before the first day of July Anno Domini eighteen hundred and eighty."

III.

No right, title or interest in or to any of the grants, franchises or other benefits in the State of Oregon, provided for by said Act of Congress approved July twenty-fifth, A. D. 1866, was ever acquired by any corporation or person, or otherwise, except at the time, in the manner, and upon the terms and conditions as hereinafter set forth.

On or about the sixth day of October, A. D. 1866, certain proceedings were had by which certain persons attempted to organize, under the general incorporation law of the State of Oregon, a corporation bearing the corporate name "Oregon Central Railroad Company," having its principal office at the city of Portland, in said State of Oregon.

Said Oregon Central Railroad Company projected its railroad line from said city of Portland in a westerly direction to the village of Forest Grove, and thence southerly to and beyond the village of McMinnville, on

the *westerly side* of the Willamette River, from which circumstance said company and its line of railroad became known, and therefore will herein be referred to and mentioned, as the "West Side Company" and the "West Side Line" respectively, to distinguish the same from a certain other line of railroad projected at about the same time on the *easterly side* of said river by another railroad company bearing the same corporate name, as hereinafter set forth.

On the tenth day of October, A. D. 1866, the legislature of the State of Oregon adopted a joint resolution, which on the last aforesaid day was approved by the governor of said State, and which is in terms as follows:

"Whereas, The Congress of the United States, at its last session, passed an act granting land to aid in the construction of a railroad and telegraph from the Central Pacific Railroad in California, to Portland, Oregon, and made it the duty of the Legislative Assembly of the State of Oregon to designate the company, organized under the laws of Oregon, which shall receive that part of said land grant lying within the State of Oregon; therefore be it

Resolved by the House, the Senate concurring, That the 'Oregon Central Railroad Company,' a company organized under the general incorporation laws of this State, be and the same is hereby designated as the company which shall be entitled to receive the land granted and all the benefits of an Act of Congress approved July 25, 1866, entitled, 'An Act granting land to aid

in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, Oregon,' so far as the said grant applies to the State of Oregon."

Assuming in the premises to have been lawfully designated therefor, said West Side Company, on or about the twenty-fifth day of May, A. D. 1867, through its Board of Directors, adopted a resolution in terms assenting to the provisions of said Act of Congress approved July twenty-fifth, A. D. 1866, and, on or about the sixth day of July, A. D. 1867, filed in the office of the Secretary of the Interior of the United States an authenticated copy of the last aforesaid resolution, together with a certified copy of its articles of incorporation, and a certified copy of the aforesaid joint resolution of the legislature of the State of Oregon; and, on or about the twentieth day of August, A. D. 1868, filed in the last aforesaid office a general map of survey of its projected line of railroad.

In the meantime, and on or about the twenty-second day of April, A. D. 1867, certain persons, residents of the State of Oregon, then and thereafter contending that said West Side Company was never lawfully incorporated or organized, and designing to secure the several grants, franchises and other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, in that behalf caused certain proceedings to be had intended to organize, under the general incorporation law of the State of Oregon, a corporation bearing the same corporate name, to-wit, "Oregon Central Railroad Com-

pany," having its principal place of business at the city of Salem, in said State of Oregon.

Said last mentioned Oregon Central Railroad Company projected its line of railroad on the easterly side of the Willamette River, and, for the reasons hereinbefore explained, said last mentioned company and its line of railroad became known as the "East Side Company" and the "East Side Line," respectively, and therefore will herein be so referred to and mentioned.

Said East Side Company, in furtherance of its aforesaid design, on the twentieth day of October, A. D. 1868, procured a joint resolution to be adopted by the Legislature of the State of Oregon, and approved by the governor of said State, which said resolution is in terms as follows:

"Whereas, The Congress of the United States, by an Act approved July 25, 1866, entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' did grant certain lands in the State of Oregon, and confer certain benefits and privileges upon such company organized under the laws of Oregon as the Legislature of said State should thereafter designate; and

"Whereas, The Legislative Assembly of Oregon, at its fourth regular session, did adopt a joint resolution known as 'House Joint Resolution No. 13,' designating in terms the Oregon Central Railroad Company as the company entitled to receive the land granted

by, and all the benefits and privileges of, the said Act of Congress; and

"Whereas, At the time of the adoption of the said joint resolution as aforesaid, no such company as the Oregon Central Railroad Company was organized or in existence, and the said joint resolution was adopted under a misapprehension of facts as to the organization and existence of such company; and

"Whereas, The designation of the company to receive the lands in the State of Oregon granted, and the benefits and privileges conferred by, the said Act of Congress, yet remains to be made;

"Be it resolved by the Senate, the House concurring, That the Oregon Central Railroad Company, a corporation organized at Salem on the twenty-second (22d) day of April, in the year one thousand eight hundred and sixty-seven (1867), under and pursuant to the laws of the State of Oregon, be and the same is hereby designated as the company entitled to receive the lands in Oregon, and the benefits and privileges conferred by the said Act of Congress."

Thereupon a controversy arose between said West Side Company and said East Side Company, as to which of said companies was entitled to the grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866; which controversy continued until on or about the month of January, A. D. 1870, as hereinafter set forth.

Said Act of Congress approved July twenty-fifth,

A. D. 1866, prescribed as a condition precedent to the vesting of any of the grants contained therein, that the company designated by the Legislature of the State of Oregon should, within one year from said twenty-fifth day of July, A. D. 1866, file in the Department of the Interior its assent to said Act and the terms and conditions thereof.

The time within which to file an assent as aforesaid had expired long prior to the designation of said East Side Company by the Legislature of the State of Oregon on October twentieth, A. D. 1868 as aforesaid. Because of the premises, said East Side Company did apply to the Congress of the United States, during the session thereof commencing in the month of December, A. D. 1868, for an extension of the time within which to file its assent as aforesaid; and, in that behalf, did lay before Congress said joint resolution of the Legislature of the State of Oregon last herein described, and did represent that all of the recitals thereof were true, and that because of the premises, the several grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866, had lapsed, and the benefits thereof would be wholly lost to the State of Oregon unless revived by Congress in manner aforesaid.

During the consideration by Congress of said application of said East Side Company, said West Side Company likewise appeared before Congress and opposed said application, and in that behalf contended that the several grants, franchises and privileges of said Act

of Congress approved July twenty-fifth, A. D. 1866, had theretofore become, and then were, vested in said West Side Company.

Thereafter, and by Act of Congress approved April tenth, A. D. 1869, entitled, "An Act to amend an Act entitled, 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon, approved July twenty-five, eighteen hundred and sixty-six," Congress did grant the said application of said East Side Company, but upon the express condition that the lands granted as aforesaid should be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding Two Dollars and Fifty Cents per acre.

Said Act of Congress approved April tenth, A. D. 1869, is in terms as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-five, eighteen hundred and sixty-six, be, and the same is hereby, amended so as to allow any railroad company heretofore designated by the Legislature of the State of Oregon, in accordance with the first section of said Act, to file its assent to such Act in the Department of the Interior within one year from the date of the passage of this Act; and such filing of its assent, if done

within one year from the passage hereof, shall have the same force and effect to all intents and purposes as if such assent had been filed within one year after the passage of said Act; *Provided*, That nothing herein shall impair any rights heretofore acquired by any railroad company under said Act, nor shall said Act or this amendment be construed to entitle more than one company to a grant of land; *And Provided, Further*, That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding Two Dollars and Fifty Cents per acre."

On or about the eighth day of June, A. D. 1869, said East Side Company, through its Board of Directors, adopted a resolution in the following terms:

"*Whereas*, The Congress of the United States, on the 25th day of July, 1866, passed an Act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' and

"*Whereas*, Such Act provided that such company thereafter organized under the laws of Oregon, and designated by the Legislature of such State, should be entitled to receive and manage the said grant in Oregon, said Act further requiring that the company so organized and designated should, within one year from the date of its passage, (to-wit: July 25, 1866), file its assent in the Department of the Interior, and

"*Whereas*, No company was designated by such

Legislature within the year within which such an assent was required to be filed, and

"Whereas, The Legislature of the State of Oregon did, at its regular session in October, A. D. 1868, pass the following joint resolution, designating this company, (to-wit: 'The Oregon Central Railroad Company' of Salem, Oregon, a company duly incorporated and organized under the laws of the State of Oregon) as the company to take and manage such grant, and receive all the benefits of the same, in the State of Oregon;"

(Quoting in full said joint resolution, and which is hereinbefore set forth).

"And Whereas, The Congress of the United States did, in April, A. D. 1869, pass an Act amendatory of the said Act of July 25, 1866, extending the time in which the company designated might file its said assent, which Act was approved by the President of the United States, April 10, 1869, and is entitled 'An Act to amend an Act entitled an Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon, approved July 25th, 1866';

"Therefore, Resolved, That this company, the Oregon Central Railroad Company, of Salem, Oregon, incorporated at Salem, Oregon, April 22, 1867, do hereby accept all the provisions, rights, privileges and franchises of said Act of July 25, A. D. 1866, entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in

California, to Portland, in Oregon,' and of all Acts amendatory thereof and upon the conditions therein specified, and do hereby give our assent and the assent of such company thereto, and the Secretary of this company is hereby instructed to prepare a true copy of this resolution, certified to under the seal of the corporation, signed by himself as Secretary, and by the President of this company, and such certified copy transmit to and file the same with and in the office of the Secretary of the Interior at Washington City, D. C."

On or about the thirtieth day of June, A. D. 1869, said East Side Company filed in the office of the Secretary of the Interior of the United States a certified copy of said resolution last herein set forth.

On or about the twenty-ninth day of October, A. D. 1869, said East Side Company filed in the office of the Secretary of the Interior of the United States a map of survey and location of the first sixty miles of its projected line of railroad.

On the twenty-fourth day of December, A. D. 1869, said East Side Company completed the construction of the first twenty miles of its aforesaid line of railroad, commencing at the City of Portland, and on the thirty-first day of December, A. D. 1869, the same was examined and approved by commissioners appointed therefor pursuant to the provisions of section four of said Act of Congress approved July twenty-fifth, A. D. 1866.

Said West Side Company wholly failed to complete the construction of any part of its said line of railroad

pursuant to the terms and conditions of the aforesaid Acts of Congress; and on or about the month of January, A. D. 1870, said West Side Company acquiesced in the aforesaid substitution of said East Side Company as the recipient of the aforesaid grants, privileges and franchises, and abandoned and waived all claim thereto, and in lieu thereof, applied for, obtained and accepted a separate and similar grant of lands, franchises and other benefits, pertaining to its line of railroad projected as aforesaid, by Act of Congress approved May fourth, A. D. 1870, as hereinafter more particularly set forth.

By reason of the premises, no right, title or interest in or to any of the grants, franchises or other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, was ever acquired by said West Side Company, or by, through or under it; or by said East Side Company, or by, through or under it, except by virtue of, and expressly subject to, all of the terms and conditions of said Act of Congress approved April tenth A. D. 1869.

In the meantime said East Side Company had become involved in litigation questioning the validity of its incorporation and organization and its right to use said corporate name. Because of the premises, the promoters, officers and stockholders of said East Side Company did, on or about the seventeenth day of March, A. D. 1870, organize the defendant *Oregon and California Railroad Company* under the general incorporation law of the State of Oregon. In that behalf certain articles of incorporation were, on said last mentioned date, exe-

cuted in triplicate and filed, one in the office of the Secretary of State of the State of Oregon, one in the office of the County Clerk of the County of Multnomah, Oregon, (being the county in which the principal office of said corporation was located), and one in the office of the Secretary of said corporation, at the city of Portland, in said County of Multnomah.

The principal object of said corporation, as stated in its aforesaid articles of incorporation, was to become the successor of said East Side Company, and as such, to receive and exercise the grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof; a copy of which said articles of incorporation is hereto attached marked "Exhibit A" and made a part of this bill.

Pursuant to the premises, on or about the twenty-ninth day of March, A. D. 1870, said East Side Company did execute and deliver to said defendant *Oregon and California Railroad Company* a certain instrument in writing, purporting to assign, transfer and convey to said defendant *Oregon and California Railroad Company* all of the property of said East Side Company, including the right, title and interest of said East Side Company in and to the grants, franchises and other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof, a copy of which said instrument is hereto attached, marked "Exhibit B," and made a part of this bill. Thereafter, and during the months of March and

April, A. D. 1870, said instrument last described was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof.

The purpose, intent and effect of said last described instrument was and is not to operate as a sale or conveyance of any of the lands granted by the aforesaid Acts of Congress, but to constitute said defendant *Oregon and California Railroad Company* the successor of said East Side Company to construct, complete and equip the line of railroad aforesaid, and, in aid thereof, to receive and exercise the grants, franchises and other benefits in that behalf extended by Congress as aforesaid, and upon all of the terms and conditions aforesaid, and not otherwise.

On said twenty-ninth day of March, A. D. 1870, said East Side Company, by action of its Board of Directors and its stockholders, became and was dissolved and since said last mentioned date, no corporate powers or franchises have ever been exercised by, or in the name of, said East Side Company.

On the fourth day of April, A. D. 1870, the defendant *Oregon and California Railroad Company*, through its Board of Directors, adopted a resolution in terms as follows:

Whereas, This company has purchased and taken an assignment from the Oregon Central Railroad Com-

pany, of Salem, Oregon, incorporated April 22, 1867, of all the railroad franchises and other property of such corporation, including all the right, title, interest and claim, both legal and equitable, absolute and contingent, of such corporation, of, in and to the lands and all other benefits granted to the Oregon Company by an Act of Congress entitled 'An Act to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approval July 25, 1866, and amendments thereto, therefore,

Resolved, That this company do accept the grant conferred by such Act of Congress, and all the benefits and emoluments therein or thereof granted, and upon the terms and conditions therein specified, and

Resolved, That the President and Secretary of this company be and they are hereby authorized and directed to file the assent of this company to such Act of Congress and amendments thereto, as aforesaid, in the office of the Secretary of the Interior, which shall be done by filing a copy of these resolutions in such office, certified to under seal of this company, and signed by the President and Secretary respectively.

Resolved Further, That a copy of the deed of assignment from said Oregon Central Railroad Company, certified to by the President and Secretary under the seal of this company, be also filed in such office of the Secretary of the Interior, and accompanying these resolutions."

On or about the twenty-eighth day of April, A. D.

1870, the defendant *Oregon and California Railroad Company* filed in the office of the Secretary of the Interior of the United States an authenticated copy of said last described resolution, and a certified copy of said instrument dated March twenty-ninth, A. D. 1870; and at all times thereafter said defendant *Oregon and California Railroad Company* has assumed and still assumes, to be the successor of said East Side Company and of all of its rights under said Acts of Congress, as aforesaid.

IV.

Having abandoned and waived all claim to the grants, franchises and other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, as hereinbefore set forth, said West Side Company did importune the Congress of the United States to extend to it, in lieu thereof, a similar grant of lands, franchises and other benefits pertaining to its aforesaid projected line of railroad, known as the "West Side Line;" and thereafter, by an Act entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May fourth, A. D. 1870, Congress in that behalf provided as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill river, near McMinnville, in the State of Oregon, there is hereby granted

to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necessary lands for depots, stations, side tracks, and other needful uses in operating the road, not exceeding forty acres at any one place; and also, each alternate section of the public lands, not mineral, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this Act. And in case the quantity of ten full sections per mile cannot be found on each side of said road, within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency.

SEC. 2. *And be it further enacted*, That the Commissioner of the General Land Office shall cause the lands along the line of said railroad to be surveyed with all convenient speed. And wherever and as often as the said company shall file with the Secretary of the Interior maps of the survey and location of twenty or more miles of said road, the said Secretary shall cause the said granted lands adjacent to and coterminous with

such located sections of road to be segregated from the public lands; and thereafter the remaining public lands subject to sale within the limits of the said grant, shall be disposed of only to actual settlers at double the minimum price for such lands: *And provided, also,* That settlers under the provisions of the homestead Act who comply with the terms and requirements of said Act, shall be entitled, within the said limits of twenty miles, to patents for an amount not exceeding eighty acres each of the said ungranted lands, anything in this Act to the contrary notwithstanding.

SEC. 3. *And be it further enacted,* That whenever and as often as the said company shall complete and equip twenty or more consecutive miles of the said railroad and telegraph, the Secretary of the Interior shall cause the same to be examined, at the expense of the company, by three commissioners appointed by him; and if they shall report that such completed section is a first-class railroad and telegraph, properly equipped and ready for use, he shall cause patents to be issued to the company for so much of the said granted lands as shall be adjacent to and coterminous with the said completed sections.

SEC. 4. *And be it further enacted,* That the said alternate sections of land granted by this Act, excepting only such as are necessary for the company to reserve for depots, stations, side tracks, wood yards, standing ground, and other needful uses in operating the road, shall be sold by the company only to actual settlers, in quantities not exceeding one hundred and sixty acres

or a quarter section to any one settler, and at prices not exceeding Two Dollars and Fifty Cents per acre.

SEC. 5. *And be it further enacted*, That the said company shall, by mortgage or deed of trust to two or more trustees, appropriate and set apart all the net proceeds of the sales of the said granted lands, as a sinking fund, to be kept invested in the bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity, of the first mortgage construction bonds of the company, on the road depots, stations, side tracks, and wood yards, not exceeding Thirty Thousand Dollars per mile of road, payable in gold coin not longer than thirty years from date, with interest payable semi-annually in coin not exceeding the rate of seven per centum per annum; and no part of the principal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and cancelled; and each of the said first mortgage bonds shall bear the certificate of the trustees, setting forth the manner in which the same is secured and its payment provided for. And the District Court of the United States, concurrently with the State Courts, shall have original jurisdiction, subject to appeal and writ of error, to enforce the provisions of this section.

SEC. 6. *And be it further enacted*, That the said company shall file with the Secretary of the Interior its assent to this Act within one year from the time of its passage; and the foregoing grant is upon condition that said company shall complete a section of twenty or

more miles of said railroad and telegraph within two years, and the entire railroad and telegraph within six years, from the same date."

By said words "Oregon Central Railroad Company," in said last mentioned Act of Congress, the Congress of the United States intended to, and did, refer to said West Side Company. The line of railroad prescribed in said last mentioned Act, extending from the city of Portland to McMinnville, by way of Forest Grove, is the identical line of railroad theretofore projected by said West Side Company, as aforesaid.

On or about the second day of July, A. D. 1870, said West Side Company, through its Board of Directors, adopted a resolution in terms assenting to, and accepting, all of the aforesaid provisions of said last mentioned Act of Congress, and on or about the twentieth day of July, A. D. 1870, an authenticated copy of said last described resolution was, by said West Side Company, filed in the office of the Secretary of the Interior of the United States.

On or about the fifteenth day of August, A. D. 1870, all of the so-called capital stock of said West Side Company was acquired by the then owners of the so-called capital stock of said defendant *Oregon and California Railroad Company*, and thereafter all of the so-called capital stock of both of said companies was held by a single interest, and the affairs of said two companies were conducted virtually as a single enterprise until the dissolution of said West Side Company, as hereinafter stated.

V.

All of the original capital stock of the defendant *Oregon and California Railroad Company*, and substantially all of the capital stock of said West Side Company, was issued without consideration, and, by reason of the premises, neither of said companies had any original capital or other funds for construction or other purposes, except such as was borrowed therefor.

By the issuance and negotiation or pledge of mortgage bonds and otherwise, approximately Eight Million Dollars was, during the year 1870, procured by said defendant *Oregon and California Railroad Company*, and approximately One Million Dollars was, during the year 1871, procured by said West Side Company; and, with the funds thus provided, the work of constructing the aforesaid lines of railroad respectively, was prosecuted until on or about the month of January, A. D. 1873. During said period of construction, said East Side Line was constructed and extended from said city of Portland to a point near Roseburg, a distance of approximately one hundred and ninety-seven (197) miles, (including said first section of twenty miles theretofore constructed), and said West Side Line was constructed and completed from said city of Portland to said Mc-Minnville, by way of said Forest Grove, a distance of approximately forty-seven (47) miles.

On or about the said month of January, A. D. 1873, said funds became exhausted and both of said companies became bankrupt and insolvent, and because thereof, the

construction of both of said lines of railroad was abandoned; and, as to said East Side Line, was not resumed until the month of June, A. D. 1881, as hereinafter set forth; and, as to said West Side Line, was never resumed.

Because of the premises, on or about the twenty-fourth day of July, A. D. 1874, the direction and control of the financial affairs of said two companies were assumed and thereafter exercised by the then creditors thereof, organized under the name "Bondholders Committee." On or about the twenty-ninth day of February, A. D. 1876, all of the so-called capital stock of both of said companies was, for virtually a nominal consideration, acquired by said Bondholders Committee, and thereafter all of the affairs of said two companies were conducted by, and under the direction and control of, said Bondholders Committee.

On or about the sixth day October, A. D. 1880, for the purpose of merging said West Side Company into said defendant *Oregon and California Railroad Company*, and under the direction and influence of said Bondholders Committee, said West Side Company did execute and deliver to said defendant *Oregon and California Railroad Company* a certain instrument, in writing, purporting to assign, transfer and convey to said defendant *Oregon and California Railroad Company* all of the property of said West Side Company, including the right, title and interest of said West Side Company in and to the grants, franchises and other benefits of said Act of Congress approved May fourth, A. D.

1870; a copy of which said instrument is hereto attached marked "Exhibit C" and made a part of this bill.

The purpose, intent and effect of said last described instrument was and is not to operate as a sale or conveyance of any of the lands granted by said Act of Congress approved May fourth, A. D. 1870, but to constitute said defendant *Oregon and California Railroad Company* the successor of said West Side Company to construct, complete and equip the line of railroad aforesaid, and particularly that part thereof extending from Forest Grove to Astoria, and, in aid thereof, to receive and exercise the grants, franchises and other benefits in that behalf extended by Congress as aforesaid, and upon all of the terms and conditions aforesaid, and not otherwise.

On or about said sixth day of October A. D. 1880, said West Side Company, by action of its Board of Directors and its stockholders, became and was dissolved; and at all times thereafter said defendant *Oregon and California Railroad Company*, has assumed, and still assumes, to be the successor of said West Side Company, as aforesaid.

Substantially all transactions subsequent to said last mentioned date relate to and affect both of the aforesaid grants of land. Hereafter in this bill of complaint, for convenience, said grant of land created by said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof, will be described by the words "East Side Grant;" said grant of land created by said Act of Congress approved May fourth,

A. D. 1870, will be described by the words "West Side Grant;" and both of said grants will be described by the words "said land grants."

VI.

On or about the seventh day of May, A. D. 1881, the financial affairs of the defendant *Oregon and California Railroad Company* were adjusted in manner following: All of its former capital stock was, by action of its Board of Directors and its stockholders, canceled, for the reasons hereinbefore set forth; the amount of its capital stock was then established, and at all times since has remained, and still is, in the total sum of Nineteen Million Dollars (\$19,000,000), composed of Twelve Million Dollars so-called preferred stock and Seven Million Dollars so-called common stock; and in payment of its then existing indebtedness, with accrued interest thereon, all of said new capital stock was then issued, and ever since has been, and still is, outstanding. By the issuance of said new capital stock, and by the use of a part of the proceeds of a new bond issue hereinafter referred to all of its then existing indebtedness was fully paid and discharged, and the several mortgages and other instruments purporting to secure the same, were canceled and satisfied.

On or about the second day of June, A. D. 1881, the defendant *Oregon and California Railroad Company* executed and delivered to Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, as Trustees for the owners and holders of said preferred stock so-

called, a certain instrument, in writing, purporting to convey to said Trustees all of the lands of both of said land grants, in trust to secure to the owners of said preferred stock so-called, some pretended right or interest in or to said lands, and for certain other purposes, as more particularly appears in said instrument, a copy of which is hereto attached, marked "Exhibit D" and made a part of this bill.

Said deed of trust last described purports to convey, and purports to authorize said Trustees and their successors to sell and convey, said lands to persons other than actual settlers, and in quantities greater than one-quarter section to one purchaser, and for a price exceeding Two Dollars and Fifty Cents per acre, and for purposes other than those prescribed in and by said land grants respectively; and because thereof, and otherwise, said deed of trust was and is in violation and breach of the aforesaid terms, conditions and provisions of each of said land grants respectively.

On or about the twenty-eighth day of June, A. D. 1881, said deed of trust was recorded in the office of the County Recorder of Multnomah County, in the State of Oregon, in Book 27 of Mortgages, at page 179; and thereafter, and at about the same time, was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by either of said land grants.

Thereafter such proceedings were had and action taken under the terms of said deed of trust, and by and with the consent and co-operation of the defendant

Oregon and California Railroad Company, that the defendant *Stephen T. Gage* became, and he now is, the sole surviving Trustee thereunder; and said defendant *Stephen T. Gage*, individually, and as Trustee as aforesaid, and the defendant *Southern Pacific Company* as the present owner of all of said preferred stock so-called, claim and assert some right, title, interest or lien in, to or upon said lands or some part thereof, under and by virtue of said deed of trust; but because of the premises, neither of said defendants has any right, title, interest or lien in, to or upon any part of said lands.

By the issuance and negotiation of two separate issues of its corporate bonds, bearing date June first, A. D. 1881, and May twenty-sixth, A. D. 1883, respectively (known and described as "First Mortgage Bonds" and "Second Mortgage Bonds" respectively), the defendant *Oregon and California Railroad Company* did provide further construction funds aggregating approximately Five Million Dollars, and on or about the month of June, A. D. 1881, the work of constructing said East Side Line was resumed, and thereafter was continued until on or about the month of January, A. D. 1884. During said last mentioned period of construction, said East Side Line was constructed and extended from said Roseburg to a point about one and one-quarter miles southerly from Ashland, in the State of Oregon, a total distance of approximately one hundred and forty-five (145) miles.

On or about the said month of January, A. D. 1884, said last mentioned construction funds became exhausted,

the defendant *Oregon and California Railroad Company* again became bankrupt and insolvent, and the work of construction was again abandoned, and was not resumed until the month of April, A. D. 1887, as hereinafter set forth.

On or about the nineteenth day of January, A. D. 1885, said First and Second Mortgage Bonds being still outstanding, in a suit then instituted and pending in the Circuit Court of the United States for the District of Oregon, wherein certain of the holders of said First Mortgage Bonds were plaintiffs, and said defendant *Oregon and California Railroad Company* and others were defendants, the railroad lines and other property of said defendant *Oregon and California Railroad Company* were placed in the hands of a Receiver then and there appointed therefor by said Court.

On or about the twelfth day of May, A. D. 1887, and during the pendency of said receivership, the defendant *Southern Pacific Company* acquired, and thereafter exercised ownership and control of said defendant *Oregon and California Railroad Company*, as hereinafter more specifically set forth; and, subsequently, under the direction and influence of said defendant *Southern Pacific Company*, certain breaches and violations of the terms and conditions of said land grants respectively hereinafter complained of were committed.

And to the end that Your Honors may be further advised in the premises, and particularly concerning the nature and purpose of the several negotiations and transactions pertaining to, and resulting in, the absorption

of the defendant *Oregon and California Railroad Company* by the defendant *Southern Pacific Company* (in paragraph VII hereof, set forth), your Orator says, that on and prior to said twelfth day of May, A. D. 1887, the general status of said land grants was as follows, to wit:

Under said East Side grant, during the years 1871 to 1877 inclusive, patents for approximately 323,000 acres of land (being lands contiguous to the first 125 miles of said East Side Line), were applied for by, and issued to, the defendant *Oregon and California Railroad Company* as the successor of said East Side Company; except as aforesaid, no patents under said East Side grant were issued until the year 1893.

Under said West Side grant, no patents were ever issued prior to the year 1895.

The total length of said East Side Line is approximately 367 miles; with the exception of the northerly 197 miles thereof, no part of said East Side Line was constructed within the times prescribed by the terms of said East Side grant; and on said twelfth day of May, A. D. 1887, the southerly portion thereof, extending from Ashland to the southern boundary line of the State of Oregon, still remained unconstructed. Of the West Side Line, that part thereof extending from Forest Grove to Astoria, was never constructed, and because of the premises, the aforesaid granted lands contiguous to said unconstructed portion, were, by Act of Congress approved January thirty-first, A. D. 1885, entitled, "An Act to declare forfeiture of certain lands granted to aid

in the construction of a railroad in Oregon," forfeited to, and the ownership thereof resumed by, the United States of America.

Of the aforesaid granted lands, approximately 250,000 acres had been sold prior to said twelfth day of May, A. D. 1887; and your Orator is informed and believes, and therefore states, that nearly all of the lands so disposed of were sold to actual settlers, and in small quantities, although in many instances in quantities and for prices slightly in excess of the aforesaid limitations prescribed by said land grants respectively.

VII.

On or about the month of January, A. D. 1885, a certain railroad syndicate known as the "Southern Pacific System," controlling substantially all railroad lines in the southwestern part of the United States, and particularly on the Pacific Coast south of the State of Oregon, including the Central Pacific Railroad Company (which had theretofore become the successor to the grants, franchises and other benefits in the *State of California*, under said Act of Congress approved July twenty-fifth, A. D. 1866), organized, under the general incorporation law of the State of Kentucky, the defendant *Southern Pacific Company*, as a general holding company for said syndicate; and, on or about the month of March, A. D. 1885, said defendant *Southern Pacific Company* acquired, and ever since has exercised, a controlling interest in each of the corporations constituting said Southern Pacific System; and, at about the same

time, became, and ever since has been, the lessee of each of said corporations, whereby it came into possession of, and at all times thereafter has operated, all of said railroad lines.

Several of the constituent companies of said Southern Pacific System held lands granted by the United States in aid of the construction of their respective lines of railroad, aggregating many millions of acres. Shortly after its organization, the defendant *Southern Pacific Company* established a general land department, with offices at the city of San Francisco, in the State of California, under the charge of a certain officer known as its land agent, and thereupon assumed, and thereafter exercised, through its said land agent, control over the handling and disposing of all of the lands of its constituent companies.

Shortly after the affairs of said defendant *Oregon and California Railroad Company* were placed in the hands of a Receiver, as hereinbefore set forth, said defendant *Southern Pacific Company*, designing to extend its aforesaid railroad system and its aforesaid land holdings by acquiring ownership and control of the defendant *Oregon and California Railroad Company*, in that behalf entered into negotiations with said defendant *Oregon and California Railroad Company* and the bondholders and stockholders thereof and certain other parties hereinafter named; and, for the purpose thereof, the stockholders of said defendant *Oregon and California Railroad Company* became and were organized under the name "Stockholders Committee," certain of

the owners of the aforesaid mortgage bonds became and were organized under the name "Frankfort Bondholders Committee," and certain other of the owners of said bonds became and were organized under the name "London Bondholders Committee," said Bondholders Committees representing the owners of substantially all of the aforesaid First and Second Mortgage Bonds of said company.

On or about the twenty-eighth day of March, A. D. 1887, a certain contract in writing was entered into by and between said defendant *Southern Pacific Company*, said defendant *Oregon and California Railroad Company*, the defendant *Union Trust Company*, said Stockholders Committee, said London Bondholders Committee, said Frankfort Bondholders Committee, and the Pacific Improvement Company (a corporation organized as hereinafter set forth), a copy of all of the terms of which contract is hereto attached marked "Exhibit E" and made a part of this bill.

By virtue of said last described contract, all of the corporate securities of the defendant *Oregon and California Railroad Company* were acquired by the defendant *Southern Pacific Company*, as hereinafter set forth; and the general purpose and effect of said contract were such that said defendant *Oregon and California Railroad Company* (together with its said lines of railroad), was absorbed by, and merged into, said Southern Pacific System, and the independent corporate existence thereof virtually ceased. But it manifestly appears from the subsequent conduct of said defendant *Southern Pacific*

Company, and your Orator charges and states, that at the time of the negotiation and execution of said last described contract, it was the purpose and design of said defendant *Southern Pacific Company* to secure control of the aforesaid land grants, and to divert the same from the aforesaid lawful uses and purposes thereof, to the exclusive use, benefit and enrichment of said defendant *Southern Pacific Company*; and to that end, said last described contract was, by the parties thereto, so conditioned, and the conditions, options and provisions thereof were so exercised and performed, that said defendant *Southern Pacific Company* did thereafter maintain said defendant *Oregon and California Railroad Company* a corporation in name and form only, as a mere instrumentality and device, to accomplish, and at the same time to conceal its aforesaid purpose and design, and in that behalf to obtain and dispose of said lands in the name of, and under the guise and pretense of the administration and exercise of the aforesaid land grants by, the defendant *Oregon and California Railroad Company*; and to that end, certain proceedings were had and transactions entered into, including that certain contract of lease and that certain mortgage deed hereinafter set forth.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, on or about the twelfth day of May, A. D. 1887, all of the capital stock and all of said Second Mortgage Bonds of said defendant *Oregon and California Railroad Company* were transferred, assigned and delivered to said Pacific Improvement

Company; and all of said First Mortgage Bonds were transferred, assigned and delivered to the defendant *Southern Pacific Company*.

During all the times mentioned in this bill as to it, said Pacific Improvement Company was a corporation organized and existing under the laws of the State of California, and wholly owned, controlled and directed by the owners of a majority of the capital stock of the defendant *Southern Pacific Company*. The defendant *Southern Pacific Company* was the actual purchaser of said capital stock and said Second Mortgage Bonds, and paid all the purchase price therefor, and said Pacific Improvement Company never had any beneficial interest therein; but, under the direction and influence of said defendant *Southern Pacific Company*, said Pacific Improvement Company was made a nominal party to said contract of March twenty-eighth, A. D. 1887, for the purpose of concealing the true facts in the premises.

Said Pacific Improvement Company held said capital stock of the defendant *Oregon and California Railroad Company* for the use and benefit of the defendant *Southern Pacific Company*, until on or about the ninth day of April, A. D. 1901, and on or about said last mentioned date, all of said capital stock was transferred to the defendant *Southern Pacific Company*, which, at all times thereafter, has been, and still is, the owner and holder thereof. At all times since said twelfth day of May, A. D. 1887, the defendant *Southern Pacific Company* has controlled and directed the election of directors and officers of said defendant *Oregon and Cali-*

*for*nia Railroad Company, and has directed and controlled the management and conduct and all of the corporate acts of said defendant *Oregon and California Railroad Company*, including all transactions and proceedings in this bill set forth.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, on or about the third day of January, A. D. 1888, the defendant *Southern Pacific Company* and the defendant *Oregon and California Railroad Company* entered into a certain contract of lease in writing, bearing date the first day of July, A. D. 1887, whereby all of the railroad and telegraph lines and other property of the defendant *Oregon and California Railroad Company* were leased to the defendant *Southern Pacific Company* for the term of forty years, upon certain terms and conditions, all of which more specifically appear in said instrument, a copy of all of the terms of which is hereto attached, marked "Exhibit F," and made a part of this bill; which said contract of lease remained in full force and effect until on or about the first day of August, A. D. 1893, upon which last named date the defendant *Southern Pacific Company* and the defendant *Oregon and California Railroad Company* entered into a further contract of lease in writing, bearing date the first day of August, A. D. 1893, whereby all of the railroad and telegraph lines and other property of the defendant *Oregon and California Railroad Company* were leased to the defendant *Southern Pacific Company* for the term of thirty-four years, upon certain terms and conditions, all of which more specifically

appear in said instrument, a copy of all of the terms of which is hereto attached, marked "Exhibit G," and made a part of this bill; which said last described contract of lease at all times since said first day of August, A. D. 1893, has been, and still is, in full force and effect. Pursuant to said contracts of lease, the defendant *Southern Pacific Company* did, on or about the sixth day of June, A. D. 1888, enter into possession of all of the property leased as aforesaid, and at all times thereafter has been, and still is, in full possession thereof, and engaged in the operation of said lines of railroad, and during all of said times has enjoyed, and still is enjoying, all of the benefits and profits thereof.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, and under the direction and influence of the defendant *Southern Pacific Company*, on or about the third day of January, A. D. 1888, the defendant *Oregon and California Railroad Company* executed and delivered to the defendant *Union Trust Company* a certain instrument in writing, bearing date of July first, A. D. 1887, purporting to mortgage and convey in trust to the defendant *Union Trust Company*, certain of the property of the defendant *Oregon and California Railroad Company*, for certain purposes, and upon certain terms and conditions therein expressed, and, among others, to secure the payment of certain bonds thereafter to be issued and negotiated in the name of said defendant *Oregon and California Railroad Company*, a copy of which said instrument is hereto attached, marked "Exhibit H," and made a part of this

bill.

By that certain provision of said instrument last described, to wit:

"And all the property, real, personal or mixed, which on the twelfth day of May, 1887, was covered by the mortgage securing the then existing First Mortgage Bonds of the Oregon and California Railroad Company,"

reference was had, and intended to be had, to a certain deed of trust, executed by said defendant *Oregon and California Railroad Company* to Henry Villard, Horace White and Charles Edward Bretherton, as Trustees, bearing date June first, A. D. 1881, a copy of which is hereto attached, marked "Exhibit I," and made a part of this bill.

On or about the eighteenth day of January, A. D. 1888, said mortgage deed bearing date July first, A. D. 1887, was recorded in the office of the County Recorder of Multnomah County, in the State of Oregon, in Book 63 of Mortgages, at page 437; and thereafter, and about the same time, was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by either of said land grants.

Pursuant to the premises, the defendant *Oregon and California Railroad Company* did execute, and the defendants *Southern Pacific Company* and *Union Trust Company* did negotiate and deliver, certain of the bonds provided for by said mortgage deed bearing date July first, A. D. 1887, said bonds bearing even date there-

with, of which approximately Seventeen Million, Five Hundred Thousand Dollars (\$17,500,000) in amount are still outstanding, the exact amount whereof is to your Orator unknown. All of said bonds inured to the exclusive benefit of the defendant *Southern Pacific Company* and were used by the defendant *Southern Pacific Company* to purchase the securities of the defendant *Oregon and California Railroad Company*, as aforesaid, and to complete the construction of, and improve, the lines of railroad leased by it as aforesaid. By reason of the premises, said bonds in fact represent and constitute the indebtedness of the defendant *Southern Pacific Company*; and the payment of all of said bonds, both as to principal and interest, was and is, by endorsement thereon in writing, guaranteed by the defendant *Southern Pacific Company*.

In so far as said mortgage deed bearing date July first, A. D. 1887, relates to any of said granted lands, if at all, it purports to convey, and purports to authorize the defendant *Union Trust Company* and its successors to sell and convey, said lands to persons other than actual settlers, and in quantities greater than one-quarter section to one purchaser, and for a price exceeding Two Dollars and Fifty Cents per acre, and for purposes other than those prescribed in and by said land grants respectively; and because of the premises in this bill set forth, said mortgage deed was and is in violation and breach of the aforesaid terms, conditions and provisions of each of said land grants respectively.

The defendant *Union Trust Company*, individually,

and as Trustee for the holders and owners of said bonds, claims some right, title, interest or lien, in, to or upon some of said granted lands, under and by virtue of said mortgage deed bearing date July first, A. D. 1887; but because of the premises, the defendant Union Trust Company has no right, title, interest or lien, in, to or upon any of said lands, either in its own behalf, or as Trustee as aforesaid.

In the meantime and during the year 1887 (commencing in the month of April and ending in the month of December), the last section of said East Side Line, extending from Ashland aforesaid to the southern boundary line of the State of Oregon, was constructed by said Pacific Improvement Company, under some form of contract with the defendant *Southern Pacific Company*, the particulars whereof are to your Orator unknown; but, in furtherance of its aforesaid purpose and design, on or about the sixth day of June, A. D. 1887, the defendant *Southern Pacific Company* did instigate and cause the defendant *Oregon and California Railroad Company* and said Pacific Improvement Company to enter into a certain contract, by the terms of which the defendant *Oregon and California Railroad Company* agreed to pay for said work of construction in its said bonds thereafter to be issued and guaranteed by the defendant *Southern Pacific Company*, as hereinbefore set forth. And your Orator says that in truth and in fact, at the time of the execution of said contract of June sixth, A. D. 1887, a large part of said work of construction had been performed under some prior

contract, as hereinbefore set forth.

On or about the sixth day of June, A. D. 1888, the aforesaid receivership proceedings were dismissed and said Receiver was discharged; all of said First Mortgage Bonds and said Second Mortgage Bonds (not including said issue of bonds dated July 1st, A. D. 1887), together with all mortgages and trust deeds securing the payment thereof, were canceled and discharged; and thereupon the defendant *Southern Pacific Company* entered into possession of all of the property of the defendant *Oregon and California Railroad Company* pursuant to the terms of said contract of lease, as hereinbefore set forth.

VIII.

Immediately after said sixth day of June, A. D. 1888, the defendant *Southern Pacific Company*, through its aforesaid land department, assumed, and at all times thereafter has exercised, absolute control over the disposition and sale of the aforesaid granted lands of the defendant *Oregon and California Railroad Company*; conducting all business, however, in the name of the latter company.

Until about the year 1893, there was no marked change in the manner of the disposition of said lands, but, in the meantime, and under the direction and influence of the defendant *Southern Pacific Company*, preparations were made for the future exploitation of said land grants, to wit:

On or about the month of June, A. D. 1888, a large force of timber cruisers and land examiners was organ-

ized and thereafter was kept employed until all of said lands had been examined and appraised and prices fixed thereon without regard to the aforesaid limitations prescribed by said land grants; and your Orator says, that as to at least eighty per cent (80%) of all of said granted lands, the first sale price fixed thereon and the lowest price for which the same were ever offered for sale was greatly in excess of the sum of Two Dollars and Fifty Cents per acre.

During the years 1891 and 1892, anticipating and seeking to evade responsibility for the contemplated violations of the terms and conditions of said grants, and under the direction and influence of the defendant *Southern Pacific Company*, the defendant *Oregon and California Railroad Company* and the defendant *Union Trust Company* adopted quit-claim form of contracts and conveyances for use in making sales of said lands, and thereafter refused to contract for, or give, any other form of conveyance, except in cases where, by prior contracts, the defendant *Oregon and California Railroad Company* had obligated itself to do otherwise.

Commencing with about the year 1891, patents were rapidly applied for and obtained, the amount patented under said East Side grant, commencing with the year 1893, aggregating approximately 2,450,000 acres, and the amount patented under said West Side grant, commencing with about the year 1895, aggregating approximately 128,000 acres, being the only patents ever applied for or issued under said West Side grant. No patents have been issued since the year 1906, under either

of said land grants, for reasons hereinafter explained.

In the meantime, the defendant *Southern Pacific Company* was engaged in developing a market and demand for said lands among wealthy land speculators and timber men, aided in that behalf by its well-equipped organization therefor, and by an extensive acquaintance previously established by said land department in the sale and disposition of its other land holdings hereinbefore mentioned. A sudden and rapidly increasing demand for said lands in large quantities and at rapidly increasing prices, was developed, commencing with about the year 1894.

Taking advantage of the opportunity to violate the terms and conditions of said land grants, promoted and developed as aforesaid, the defendant *Oregon and California Railroad Company*, under the direction and influence of the defendant *Southern Pacific Company*, from about the year 1894 until about January first, A. D. 1903, sold and disposed of said granted lands in manner and upon terms in violation and breach of the aforesaid terms and conditions of said land grants respectively, and with the sole object of securing the greatest possible financial benefit therefrom; and in that behalf a large quantity of said lands was sold to speculators and others than actual settlers, and for speculation and purposes other than actual settlement, and in quantities greatly in excess of one-quarter section to one purchaser, to wit: in quantities from one thousand to forty-five thousand acres to a single purchaser, and for prices greatly in excess of \$2.50 per acre, to wit: for prices from \$5 to

\$40 per acre.

Of said granted lands the defendant *Oregon and California Railroad Company* (in manner aforesaid) has heretofore made approximately 5,306 sales, aggregating approximately 820,000 acres, that is to say:

	Sales.	Acres.
Sales in quantities not exceeding one-quarter section	4980	296,000
Sales in quantities exceeding one-quarter section	376	524,000

Substantially all of said 524,000 acres sold in quantities exceeding a quarter section to one purchaser as aforesaid (and a considerable portion of said other lands sold as aforesaid), were sold to speculators and others than actual settlers and for the purpose of speculation and not for the purpose of settlement and for prices greatly in excess of two dollars and fifty cents per acre. And of said 524,000 acres sold in quantities exceeding one-quarter section to one purchaser as aforesaid, approximately 478,000 acres (or about 90 per cent thereof) were sold or conveyed since the year 1897; and of said 478,000 acres, approximately 370,000 acres were sold to 38 purchasers in quantities exceeding 2,000 acres to each purchaser.

Nearly all sales were made by contracts providing for payment of purchase price in from five to ten equal annual installments, and execution of conveyance upon final payment. And although sales were suspended on or about January first, A. D. 1903, as hereinafter stated, many contracts of sale were then pending, as to which

the installments falling due have been collected and conveyances executed from time to time down to and including the present, and many of such contracts are still pending.

Of the total sales made as aforesaid, approximately 4,476 have been fully executed and conveyances given aggregating approximately 646,000 acres; and approximately 880 executory contracts are still pending, aggregating approximately 174,000 acres.

For the more specific information of Your Honors, your Orator has prepared a schedule setting forth all said conveyances heretofore made and all said pending contracts, stated separately as to each of said land grants, which schedule is hereto attached, marked "Exhibit J," and made a part of this bill. In said schedule, conveyances are appropriately classified by years, and also according to quantity of land conveyed and purchase price; pending contracts are classified according to quantity of land sold. Your Orator is not informed as to the exact time said pending contracts were negotiated or executed or as to the exact purchase price thereof; but your Orator is informed and believes and therefore states, that all of said pending contracts were negotiated and entered into since the first day of January, A. D. 1898, and prior to the first day of January, A. D. 1908, and that the average purchase price thereof is approximately Ten Dollars per acre. Said schedule (Exhibit J) was compiled on the first day of July, A. D. 1908, but no subsequent transactions affect the matters therein stated, except that a few of said pending contracts have

since said compilation matured and merged into final conveyances.

As to the statements contained herein (including said Exhibit J) concerning the number of sales, quantity of land sold, and the purchase price thereof, transactions consisting of executory contracts of sale, which were rescinded or cancelled for any reason, and which therefore neither merged into deeds nor constitute pending contracts at the present time, are not included in any of said computations. Transactions relating to that part of said West Side grant which was forfeited to your Orator, as aforesaid, are not included in said computations.

Except as otherwise specifically stated, all statements in this bill concerning the manner of selling and disposing of said lands, apply to each of said land grants.

As between the parties thereto, said mortgage deed bearing date July first, A. D. 1887, to the defendant *Union Trust Company*, has been treated as a lien upon all of said granted lands which remained unsold on the twelfth day of May, A. D. 1887. As to all lands of the last described class which have been sold since said twelfth day of May, A. D. 1887, the defendant *Union Trust Company* has received substantially all of the purchase price, and has joined in the execution of all conveyances. The exact amount thus received by the defendant *Union Trust Company*, and the specific application thereof, are to your Orator unknown; but your Orator says that the proceeds of all sales made since said twelfth

day of May, A. D. 1887, have inured to the exclusive benefit of the defendant *Southern Pacific Company*, by application in payment of the aforesaid bonds guaranteed by the defendant *Southern Pacific Company*, or otherwise.

IX.

In the month of October, A. D. 1901, the defendant *Southern Pacific Company*, with all of its constituent lines, became merged into that certain railroad system known as the "Harriman Lines," which said railroad system at all times thereafter has held a monopoly of railroad transportation affecting a large part of the United States, and particularly in the State of Oregon, south of Portland.

Thereupon a land department was organized and established at the city of San Francisco, to handle, exploit and manipulate all of the lands of the constituent companies of said Harriman Lines, including the aforesaid land grants of the defendant *Oregon and California Railroad Company*. All transactions concerning the last named land grants were conducted as before in the name of the defendant *Oregon and California Railroad Company*. Sales were continued as before until on or about January first, A. D. 1903.

On said first day of January, A. D. 1903, there remained unsold of said granted lands approximately 2,373,000 acres, consisting of approximately 2,080,000 acres which have been heretofore patented under said land grants, and approximately 293,000 acres of unpat-

ented lands which are now claimed by the defendant *Oregon and California Railroad Company* under and by virtue of said land grants. Said lands remaining unsold as aforesaid will hereinafter be described by the words "said unsold lands."

Approximately 1,800,000 acres of said unsold lands are situated southerly from Eugene, and constitute nearly one-half, in alternate sections, of all lands within approximately forty miles of said line of railroad from Eugene to the southerly boundary line of the State of Oregon, only a small portion of said granted lands in that part of the East Side grant having ever been sold. The territory in which said unsold lands are situated was and is wholly dependent for railroad transportation on the railroad lines of the defendant *Oregon and California Railroad Company*, now operated by the defendant *Southern Pacific Company* as one of the constituent companies of said Harriman Lines as aforesaid.

Since said first day of January, A. D. 1903, and particularly during the last preceding two years, certain persons exceeding one thousand in number have severally applied to the defendant *Oregon and California Railroad Company* to purchase certain of said unsold lands in quantities not exceeding one hundred and sixty acres, or a quarter section to each one of them, said applicants to purchase intending and desiring to purchase said lands so applied for by them respectively for the purpose of actually settling thereupon and making a permanent home thereof, and several of said applicants to purchase having actually settled and established a permanent

home upon the land so applied for by them respectively; and at the time of said applications to purchase each of said applicants did tender to the defendant *Oregon and California Railroad Company* the sum of Two Dollars and Fifty Cents for each acre of the lands so applied for as the purchase price thereof.

And in addition to the said applicants to purchase, a large number of persons are ready and willing to settle upon said lands, and to purchase the same for the purpose of actual settlement thereupon and of making a permanent home thereof, in quantities, for the price, and upon terms as prescribed by said land grants respectively, but are deterred therefrom by the defendant *Oregon and California Railroad Company*, as hereinafter stated.

Notwithstanding the premises, and in violation and breach of the aforesaid terms and conditions of said land grants respectively, the defendant *Oregon and California Railroad Company*, under the direction and influence of the defendant *Southern Pacific Company* as one of the constituent companies of said Harriman Lines, on or about the first day of January, A. D. 1903, withdrew from sale all of said unsold lands, and at all times thereafter has refused, and still refuses, to sell any part thereof to actual settlers or for purposes of actual settlement, or in quantities or for prices as prescribed by the terms of said land grants respectively, or at all; and particularly has at all times refused, and still does refuse, to entertain any of the aforesaid applications to purchase, or to sell any of the lands applied for as aforesaid, to the persons aforesaid, upon the terms aforesaid, or upon any

terms whatsoever. And ever since said first day of January, A. D. 1903, the defendant *Oregon and California Railroad Company* has not only failed and neglected to encourage or promote the settlement of said lands, or the purchase thereof by actual settlers, or for the purpose of actual settlement, but by divers means and methods has at all times discouraged, obstructed, forbidden and prevented the settlement of said lands or any part thereof, and the purchase thereof or any part thereof, upon the terms prescribed by said land grants, or otherwise, by actual settlers or for the purpose of actual settlement.

Since said first day of January, A. D. 1903, the defendant *Oregon and California Railroad Company* has assumed, and now asserts, an absolute and unconditional estate in and to all of said unsold lands, and has attempted, and still does attempt, to convert its aforesaid conditional estate into an unconditional estate, in violation and breach of the aforesaid terms and conditions of said land grants. And by reason of the aforesaid nominal corporate character of the defendant *Oregon and California Railroad Company*, and the further premises herein set forth, the unconditional estate so asserted in its name has inured to the benefit of, and has been exercised by, the defendant *Southern Pacific Company* as one of the constituent companies of said Harriman Lines. The practical effect of the premises is the same as if all of said unsold lands had been conveyed to the defendant *Southern Pacific Company* for the use and benefit of said railroad syndicate.

By reason of the premises, and in violation of the express terms and conditions as well as the plain intentment of said land grants respectively, all of said unsold lands, and the full value thereof, have been converted to the use and benefit of the defendant *Southern Pacific Company*, as one of the constituent companies of the said Harriman Lines; and a virtual land monopoly has been created, and ever since said first day of January, A. D. 1903, has been maintained, and hereafter will be maintained, for the selfish uses and purposes of the defendant *Southern Pacific Company* and said railroad syndicate, enabling said railroad syndicate, among other things, to control and restrict commercial and industrial development of the territory tributary to said line of railroad, and thereby prevent the construction and establishment of competing railroad lines, which would naturally be attracted by the increase in production that would attend a normal and unrestricted development of industrial and commercial resources, if said granted lands should be sold to actual settlers and for the purpose of actual settlement pursuant to the terms and conditions of said land grants.

And your Orator says, that because of the premises, the industrial and commercial development of those portions of the State of Oregon wherein are situated said unsold lands, has been, and will continue to be, seriously retarded if not completely checked.

Except as otherwise specifically stated, all statements herein contained concerning the withdrawal of said lands from sale, the circumstances, purposes and

effects thereof, together with the subsequent opportunities to sell said lands to actual settlers and for the purpose of actual settlement, and the conduct of the defendant *Oregon and California Railroad Company* in relation thereto, apply to each of said land grants.

A schedule of all of said unsold lands which have heretofore been patented, described by governmental subdivision, tabulated by counties, and separately stated as to each of said land grants, is hereto attached, marked "Exhibit K," and made a part of this bill. Said schedule has been prepared from the annual return of said lands for purposes of taxation, made by the defendant *Oregon and California Railroad Company* to the County Assessors of the several counties in which said lands are situated; said annual tax returns purport to contain all of said granted lands which have been heretofore patented and which remain unsold, and your Orator is informed and believes, and therefore states, that the same is correct, but concerning which a full discovery is desired herein. Your Orator is unable to set forth with particularity the unpatented lands claimed as aforesaid, as to which, therefore, a full discovery is desired.

None of said unsold lands have ever been reduced to possession, or in any way improved, unless it be by persons claiming to have settled thereupon, and seeking to purchase the same, as hereinbefore, and hereinafter stated. The reasonable present value of said unsold lands exceeds the sum of \$40,000,000.

None of said unsold lands now are, or ever were,

necessary to reserve for depots, stations, side tracks, wood sheds, standing ground, or any other needful uses in operating any of said railroad lines or any part thereof, and no part of said lands ever was reserved or used, or now is reserved or used, or is intended to be reserved or used, for any of said purposes.

X.

In addition to the purchase price received from the aforesaid sales of said lands, the defendant *Oregon and California Railroad Company* has received and enjoyed certain other benefits on account of said granted lands, to wit:

A large number of contracts of sale have been forfeited because of defaults in payment of the annual installments falling due thereon, and the installments previously paid have been retained. Your Orator is not advised as to the exact amount realized in this manner, but is informed and believes, and therefore states, that it exceeds the sum of One Hundred Thousand Dollars (\$100,000). A full discovery in the premises is hereby sought.

A considerable portion of said lands has, from time to time, been leased for certain rentals paid therefor to the defendant *Oregon and California Railroad Company*. Your Orator is not advised as to the amount realized in this manner and a full discovery in the premises is hereby sought.

The defendant *Oregon and California Railroad Company* has cut and used large quantities of timber grow-

ing upon said lands, and has also sold large quantities of said timber, receiving the consideration therefor. Your Orator is not advised as to the amount realized in this manner, but is informed and believes, and therefore states, that it exceeds the sum of Two Hundred Thousand Dollars (\$200,000). A full discovery in the premises is hereby sought.

And in divers other ways the defendant *Oregon and California Railroad Company* has received and enjoyed financial benefits on account of said granted lands, the particulars concerning which are unknown to your Orator, and a full discovery in the premises is hereby sought.

XI.

The defendant *Oregon and California Railroad Company* has repeatedly threatened, and still threatens to, and will, unless restrained therefrom, sell, contract for sale, convey, or in some manner encumber or impair the title of, said unsold lands or some part thereof, in violation of the terms and conditions of said land grants respectively; and the defendant *Oregon and California Railroad Company* has heretofore cut large quantities of the timber growing upon said unsold lands and has otherwise committed waste thereupon, and by contract and otherwise, has permitted and invited others so to do; and the defendant *Oregon and California Railroad Company* threatens to, and will, unless restrained therefrom by this Court, continue to commit waste upon said unsold lands and particularly as to the timber and other natural products thereof, and will continue to permit, contract

for and invite others so to do, to the great and irreparable injury of your Orator in the premises.

XII.

Until the year 1894 there was substantially no demand for said granted lands, except for the purpose of settlement and by persons of limited means able to purchase said lands only in small quantities and at reasonable prices, and nearly all sales were of that character. During a large part of said period, the defendant *Oregon and California Railroad Company* maintained an immigration bureau, engaged in inducing immigration and settlement upon said lands, and ostensibly was not otherwise engaged in soliciting or promoting sales. By reason of the premises, the occasional violations of the terms and conditions of said land grants occurring during said period, were concealed and were generally unknown, until ascertained by your Orator as hereinafter stated.

As hereinbefore set forth, a sudden demand arose for said lands commencing about the year 1894, among wealthy speculators and timber men, promoted and developed as aforesaid; and the greater part of the substantial wrongs and violations herein complained of were committed subsequent to that time. But your Orator says that nearly all of the sales consummated after that time were made by executory contracts of sale, which were not placed of record, and which did not merge into deeds for many years thereafter, and a considerable portion of which are still pending. Many of the conveyan-

ces for excessive quantities of said lands were not placed of record until recently, and many are still unrecorded. In many instances of sales in excessive quantities, the lands were attempted to be conveyed by several deeds, each of which was for a small quantity of land, whereby the true facts were concealed.

On or about the first day of January, A. D. 1903, all of said unsold lands were withdrawn from sale, and thereafter converted to certain wrongful and unlawful uses and purposes, as hereinbefore set forth. But, designing to conceal the premises from your Orator and the general public, the defendant *Oregon and California Railroad Company* has, from time to time, falsely and deceitfully represented that said lands were withdrawn from sale for divers temporary reasons, and with the intention of resuming the sale thereof. An alleged confusion of the records of said land department, the alleged destruction of said records during the San Francisco fire, and other similar excuses were successively used to conceal the true character of said transaction.

XIII.

By reason of the premises, the several wrongful and unlawful transactions in this bill complained of, were concealed from, and wholly unknown to, your Orator, until ascertained as hereinafter stated. On or about the 14th day of February, A. D. 1907, because of the great injury inflicted upon commercial and industrial conditions as aforesaid, and it having become manifest that the several aforesaid representations concerning the

withdrawal of said lands from sale were false, the Legislature of the State of Oregon adopted and communicated to your Orator a certain memorial charging in general terms, the true facts in the premises (a copy of which memorial is hereto attached, marked "Exhibit L," and made a part of this bill); whereupon the further issuance of patents was suspended, and an investigation of the subject was instituted by your Orator, through its Attorney General, which investigation was concluded on or about the month of January, A. D. 1908. Thereupon the subject was presented to the Congress of the United States, and thereafter, by Joint Resolution, approved April thirtieth, A. D. 1908, Congress did provide as follows:

"That the Attorney General of the United States be, and he hereby is, authorized and directed to institute and prosecute any and all suits in equity, actions at law, and other proceedings which he may deem adequate and appropriate to enforce any and all rights and remedies of the United States of America in any manner arising or growing out of or pertaining to either or any of the following described Acts of Congress, to wit: 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-fifth, Eighteen Hundred and Sixty-Six, as amended by the Acts approved June twenty-fifth, Eighteen Hundred and Sixty-Eight, and April tenth, Eighteen Hundred and Sixty-Nine; * * * * * Also 'An Act granting lands to aid in the construction of a

railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,' approved May fourth, Eighteen Hundred and Seventy, including all rights and remedies in any manner relating to the lands, or any part thereof, granted by either or any of said Acts; and in and by any and all such suits, actions or proceedings, the Attorney General shall, in such manner as he shall deem appropriate, assert all rights and remedies existing in favor of the United States, relating to the subject of such suits, actions and proceedings, including the claim on behalf of the United States that the lands granted by each of said Acts respectively, or any part thereof, have been and are forfeited to the United States by reason of any breaches or violations of any of the terms or conditions of either or any of said Acts which may be alleged and established in any such suits, actions or proceedings; it not being intended hereby to determine the right of the United States to any such forfeiture or forfeitures, but it being intended to fully authorize the Attorney General in and by such suits, actions or proceedings to assert on behalf of the United States and the court or courts before which such suits, actions or proceedings may be instituted or pending to entertain, consider, and adjudicate the claim and right of the United States to such forfeiture or forfeitures, and if found to enforce the same."

Pursuant to the provisions of said last mentioned Joint Resolution of Congress, this suit is instituted.

XIV.

By reason of the several aforesaid breaches and violations of the aforesaid terms, conditions and provisions of said land grants respectively, certain of said granted lands and certain estates in certain of said granted lands have been, and are, forfeited to your Orator, the United States of America, free from any and all right, title, interest, lien or claim of the defendants herein, or either or any of them or any one claiming by, through or under them or either or any of them. Among the lands and estates in lands so forfeited to your Orator, are to wit:

(1) All of said unsold lands;

(2) Any and all right, title and interest of any kind or nature whatsoever, vested, contingent or expectant, if any, of the defendants herein, or either or any of them, in, to or concerning any of the lands granted under, or by, either of said land grants respectively.

Pursuant to the authority and direction contained in said joint resolution of Congress approved April 30th, A. D. 1908, your Orator does hereby assert title to, and does hereby resume the title of, all of said lands and estates in lands forfeited to your Orator as aforesaid.

In addition to the lands and estates in lands above specified, certain of said granted lands which have been heretofore sold in violation of the terms and conditions of said land grants, and certain estates therein, likewise have been and are forfeited to your Orator, but are not included in this suit, for reasons following, to wit:

The lands disposed of in violation of the terms and

conditions of said land grants respectively, as aforesaid, were sold, contracted for sale, or conveyed to a large number of purchasers. Including alleged rights of succession by purchase, conveyance, mortgage, descent, devise and otherwise, more than three thousand (3,000) persons, firms and corporations residing in divers parts of the United States and other parts of the world, now assert some right, title, interest or lien in, to or upon the lands sold, contracted for sale and conveyed in violation of the terms and conditions of said land grants respectively, as aforesaid. The names and places of residence of only a few of said persons, firms and corporations are as yet known to your Orator, and because of the multiplicity and complexity of said transactions, your Orator will be unable to ascertain them in time to include said parties in this suit. Said lands were sold and purchased as aforesaid, and alleged subsequent rights have been acquired therein, under greatly varying circumstances and conditions, and because of the premises, it would be inequitable to attempt to secure an adjudication of the rights of all of said parties by making only a few of them parties defendant as representatives of all thereof. To require the making of all of said persons, firms and corporations parties to this suit, or to otherwise require an adjudication herein of their respective rights in the premises, would indefinitely postpone and ultimately defeat the rights, equities and remedies of your Orator pertaining to said unsold lands, as to which the public interests require a speedy and complete adjudication and enforcement.

Therefore, to the end that justice and equity may be suitably administered in the premises, your Orator institutes this suit for the purpose of obtaining without unnecessary delay, an adjudication and enforcement of the rights, equities and remedies of your Orator against the defendants herein, pertaining to said unsold lands, and otherwise, as more specifically appears in the prayer of this bill; and hereafter, and as soon as your Orator shall be sufficiently advised in the premises, separate and further suits will be instituted for the purpose of asserting and enforcing the rights, equities and remedies now or at any time hereafter existing in favor of your Orator (and not adjudicated or enforced herein) pertaining to any of said granted lands sold or conveyed as aforesaid, or any part thereof, or in any manner arising or growing out of any and all sales and conveyances of said granted lands in violation of any of the terms or conditions of said land grants respectively.

XV.

The property described in said mortgage deed bearing date July first, A. D. 1887 (not including any of said granted lands), is of a value largely in excess of the amount of all of said bonded indebtedness purported to be secured by said mortgage deed, and is ample security therefor; your Orator, however, expressly denies that any of said granted lands are included in the property described in said mortgage deed, or that the defendant *Union Trust Company*, as trustee or otherwise, or any other person, firm, association or corporation has any

right, title, interest or lien in, to or upon any of said lands by virtue of said mortgage deed.

XVI.

Pursuant to the rules and regulations of the Department of the Interior in that behalf duly adopted and in force, all of the aforesaid patents were issued and based upon applications in writing therefor, from time to time filed in the appropriate land office of the United States by the defendant *Oregon and California Railroad Company*, as the successor of said East Side Company and said West Side Company respectively, which said applications contained descriptive lists of the lands so claimed and for which patents were so applied for; and each of which said applications was accompanied and supported by a certain affidavit in writing signed and sworn to by a certain agent of the defendant *Oregon and California Railroad Company* thereto duly authorized, to the effect, among other things, that all of the lands so claimed and for which patents were so applied for, were of the character contemplated by the grant under which they were claimed and for which patents were applied for as aforesaid; and believing and relying upon the statements contained in said applications and said affidavits, your Orator issued said patents.

XVII.

In making sales of said lands as aforesaid, the defendant *Oregon and California Railroad Company* has, in and by its contracts and conveyances relating thereto,

and particularly prior to the sixth day of June, A. D. 1898, made certain valuable reservations unto itself, as follows:

“Reserving, however, a strip of land one hundred feet wide, to be used by the Oregon & California Railroad Company for right of way and other purposes, when the railroad of said Oregon & California Railroad Company, or any of its branches, is or shall be located upon the premises; and the right to take all water needed for the operating of said railroad, and also reserving and excepting from said described premises, so much and such parts thereof as may be mineral lands, other than coal and iron.”

All of which said reservations, being in effect the creation of permanent estates in its own favor in and to a large part of said granted lands in violation and breach of the aforesaid terms and conditions of said land grants respectively, were and are null and void. But, notwithstanding the premises, the defendant *Oregon and California Railroad Company* and each of the other defendants herein, claims some inchoate right, title or interest, in and to the lands sold as last aforesaid, under and by virtue of said reservations, concerning which a full discovery is hereby sought; and such right, title and interest, if any (which is denied), were and are subject to the right of forfeiture and to the several other rights, equities and remedies of your Orator in the premises, asserted herein.

XVIII.

In addition to the several claims of the defendants in this bill specifically mentioned, the defendants and each of them claim some right, title, interest or lien in, to or upon some or all of said granted lands, the particulars whereof are to your Orator unknown, concerning which a full discovery is hereby sought; and any and all such rights, titles, interests or liens, if any, were and are subject to the right of forfeiture and to the several other rights, equities and remedies of your Orator in the premises, asserted herein.

XIX.

A schedule, accurately setting forth all maps of survey and location filed in the office of the Secretary of the Interior of the United States pursuant to the provisions of said land grants respectively, separately stated as to each of said land grants, is hereto attached marked "Exhibit M" and made a part of this bill.

A schedule, accurately setting forth the time of the construction and completion of the several sections of said railroad and telegraph lines, together with the examination, approval and acceptance thereof, separately stated as to each of said railroad and telegraph lines, is hereto attached marked "Exhibit N," and made a part of this bill.

A schedule, accurately setting forth the quantity of lands patented from time to time under each of said land grants, compiled by years, and separately stated as to

each of said land grants, is hereto attached marked "Exhibit O" and made a part of this bill. All of said patents were applied for by and issued to the defendant *Oregon and California Railroad Company*, as the successor of said East Side Company and said West Side Company respectively.

XX.

Each of the defendants (other than the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company) asserts some right, title, or interest in or to certain of said unsold lands; the general nature and basis of the claims of said last described defendants are identical, and are as follows, to wit:

Each of said last described defendants alleges to have in good faith actually settled upon certain of said unsold lands, not exceeding one-quarter section or 160 acres in quantity, with the intention of making a permanent home thereof, and to have applied to the defendant *Oregon and California Railroad Company* to purchase the lands alleged to have been settled upon as aforesaid, and to have tendered to said defendant *Oregon and California Railroad Company* the sum of \$2.50 for each acre applied for as aforesaid, as the purchase price thereof, and that the defendant *Oregon and California Railroad Company* has at all times refused, and still refuses, to entertain said applications to purchase, or to sell or convey to said last described defendants respectively the lands so applied for by them respectively, upon the

aforesaid terms, or otherwise.

And by reason of the premises alleged by said last described defendants respectively as aforesaid (the truth whereof is to your Orator unknown) said last described defendants severally assert some right, title or interest in or to the lands so applied for by them respectively as aforesaid; and each of said last described defendants has instituted a suit in equity against the defendants *Oregon and California Railroad Company, Stephen T. Gage, and Union Trust Company*, the general purpose and nature of which is to compel a sale and conveyance of the lands so applied for to said parties applying to purchase the same respectively, as aforesaid; all of which said suits are still pending, and none of which have proceeded to any issue other than exceptions to certain portions of the several bills in said suits.

The said suit instituted by the defendant *Roy W. Minkler* is pending in the Circuit Court of the United States for the Western District of the State of Washington; all of the other of said suits are pending in the Circuit Court of the United States for the District of Oregon.

A schedule accurately setting forth, as to each of said suits, the court number thereof, the names of the parties thereto, the date of the institution thereof, and a description of the land involved therein, separately stated as to each of said land grants, is hereto attached marked "Exhibit P" and made a part of this bill.

Your Orator leaves said defendants to more specific-

ally set forth herein their respective alleged rights in the premises, as they may be advised.

Unless enjoined therefrom as hereinafter prayed, said defendants instituting said suits as aforesaid will proceed, or attempt to proceed, therein to some form of final judgment or decree. Each of said suits relates to and materially affects the rights and equities of your Orator in the premises. The rights and equities of your Orator in this bill set forth, and the relief hereinafter prayed for, relate to and affect all of the aforesaid alleged rights of said defendants respectively. If said suits shall proceed further, the rights and remedies of your Orator in the premises will be hindered, obstructed and delayed, if not substantially prejudiced. And because of the multiplicity of said suits, your Orator has made said persons parties defendant in this suit, to the end that further proceedings in each of said suits instituted and pending as aforesaid may be enjoined, and, if the Court shall so order, said parties be permitted to set forth herein their respective claims, for adjudication.

Wherefore your Orator prays the judgment and decree of this Court,

FIRST.

(1) Adjudging and decreeing that those certain lands, to wit: all of said lands granted by said Act of Congress approved July 25, A. D. 1866, and the aforesaid acts amendatory thereof, and all of said lands granted by said Act of Congress approved May 4, A. D. 1870, whether patented or unpatented, now remaining

unsold as aforesaid, said lands being hereinbefore described as "said unsold lands," together with those certain lands and estates in lands, to wit: any and all right, title and interest, of any kind or nature whatsoever, vested, contingent or expectant, of the defendants herein, or either or any of them, in, to or concerning any of the lands granted under, or by, either or any of said Acts of Congress, have been and are forfeited to, and the title of all of said lands and estates in lands has been and is reverted to and reinvested in, and all of said lands and estates in lands now are the property of, your Orator, the United States of America; and quieting and confirming the title of your Orator in and to all of said lands and estates in lands, and particularly against any claim of any right, title, interest or lien, in, to or upon the same or any part thereof, by or on behalf of the defendants herein or either or any of them, or any person claiming or to claim under them or either or any of them, and requiring said defendants and each and all of them to forthwith surrender to your Orator, the United States of America, full possession and control of said lands and estates in lands, and every part thereof;

Or, if the foregoing relief shall be denied,

(2) Adjudging and decreeing that all of said lands hereinbefore described as "said unsold lands" are subject to purchase by, and sale and conveyance to, actual settlers, in quantities not exceeding one hundred and sixty acres, or one quarter section to any one purchaser, and for a price not exceeding Two Dollars and Fifty Cents per acre, pursuant to the aforesaid terms and conditions

of said land grants respectively; and that in that behalf a receiver or receivers be appointed, and be invested with the title and possession of all of said unsold lands, and be authorized and directed, by such method as the Court shall prescribe, to offer for sale, and sell and convey, said lands, to persons of the character, in the quantities, and for the price, as aforesaid, until all of said lands shall have been sold and disposed of in manner aforesaid; and providing that during the continuance of said receivership, said receiver or receivers be authorized and directed, out of any moneys derived from the sale of any of said lands as aforesaid, to pay any and all proper costs, charges and expenses necessary for the care and protection of said lands, and the sale and disposition thereof as aforesaid, including any and all taxes and assessments, if any, which from time to time are properly chargeable against any of said unsold lands which may from time to time remain unsold and undisposed of; and providing for accountings from time to time, in such manner as the Court shall prescribe, and the application and disposition of all moneys and funds which may come into the hands of said receiver or receivers from the sale or disposition of said lands as aforesaid, after the payment of all costs, charges and expenses incurred in the premises as aforesaid, rendering final accounting and final application and disposition of said moneys and funds in such manner, and to such parties, as the Court shall direct;

Or, if the foregoing relief shall be denied,

(3) That a mandatory injunction shall issue out

of and under the seal of this Court, commanding and requiring the said defendant *Oregon and California Railroad Company* to offer for sale, and sell and convey, said unsold lands to any *bona fide* actual settler who may apply to purchase the same in good faith, in quantities not exceeding one hundred and sixty acres, or one quarter section, for the price of Two Dollars and Fifty Cents per acre, under such restrictions, in such manner and by such method as the Court shall deem adequate and expedient; and providing that any and all persons who may be in any way aggrieved by the refusal or neglect of said defendant *Oregon and California Railroad Company* to sell or convey said lands to him or them in conformity with the terms hereof, or who may be in any other manner aggrieved in the premises, may hereafter apply to the Court, at the foot of said judgment and decree, for the enforcement thereof in his or their behalf.

SECOND.

That (unless, and except in so far as, said judgment and decree shall otherwise provide), each and all of the defendants herein, their officers and agents, be,

Forever enjoined and restrained from in any manner claiming or asserting any right, title, interest or lien in, to or upon the aforesaid lands and estates in lands, or any part thereof;

And forever enjoined and restrained from in any manner selling, or offering for sale, or conveying, or in any other manner disposing of, any of said lands or estates in lands, or from negotiating, executing or record-

ing any document or instrument, or doing any other act or thing, which shall in any manner affect the use or the title of any of said lands or estates in lands;

And forever enjoined and restrained from going upon any of said lands, and from cutting, removing, or in any other manner using any of the timber, trees or other natural products thereof, and from in any other manner committing waste thereupon, and from in any manner using or interfering with any of said lands or estates in lands, or any part thereof.

THIRD.

That the defendants Oregon and California Railroad Company, Southern Pacific Company, and Union Trust Company, and any other of the defendants who may have received the same, or any part thereof, do forthwith account for and pay over to your Orator, the United States of America, any and all sums of money which they or either of them may have realized or in any manner received or obtained from or by virtue of the sale or conveyance of any of the lands granted by either or any of said acts of Congress, or of any interest in any of said lands, to others than actual settlers, or in quantities exceeding one hundred and sixty acres or one quarter section to any one purchaser, or for a price exceeding the sum of two dollars and fifty cents per acre, together with lawful interest thereon from the time of the receipt thereof; that said last named defendants do forthwith account for and pay over to your Orator any and all sums of money and profits of every name and nature

whatsoever, which they or any of them may have realized or obtained from cutting down or in any other manner using the trees, timber or other natural products of any of said lands granted by either or any of said Acts of Congress, or in any other manner from the use, occupation, rents, issues, profits, accretions or increments of said lands, or any part thereof, and growing out of or from the possession thereof, or any interest or use therein, together with interest thereon from the time of the receipt thereof.

FOURTH.

That during the pendency of this suit, each of the defendants John L. Snyder, Julius F. Frahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, S. Shryock, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschild, S. H. Montgomery, W. A. Noland, John H. Haggert, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, James C. O'Neill, Alexander Fauske, Francis Wiest,

Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Marvin Martin, and Roy W. Minkler, and their respective attorneys, be enjoined and restrained from in any manner proceeding further in the suits instituted by them respectively as aforesaid, and particularly described in Exhibit P (which is hereby made a part of this prayer the same as if set forth in full herein) and that upon the final judgment and decree herein said last named defendants and each of them, and their attorneys, be permanently enjoined and restrained as aforesaid.

FIFTH.

That during the pendency of this suit, each of the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company, their officers and agents, and all persons, firms and corporations claiming or to claim by, through or under said last named defendants, or either or any of them, be enjoined and restrained from using, occupying, leasing, or in any manner exercising dominion, use, ownership or occupation of, or in any manner whatsoever interfering with, any of said unsold lands, or any part thereof;

And be further enjoined and restrained from cutting, removing, selling, or in any manner whatsoever using, interfering with, or impairing the value of, any

of the trees or timber upon, or any other natural products of, said unsold lands, or any part thereof, and from in any manner committing waste upon any of said unsold lands, and particularly as to the timber and other natural products thereof;

And be further enjoined and restrained from selling, conveying, or offering for sale, and from leasing, or offering to lease, or in any other manner disposing of, any of said lands or estates in lands herein alleged to be forfeited to your Orator as aforesaid, or from negotiating, executing or recording any document or instrument, or doing any other act or thing, which shall in any manner affect the use or the title of any of said lands or estates in lands;

And be further enjoined and restrained from contracting with, inviting, inducing, or in any manner whatsoever permitting others to do any of the things aforesaid.

SIXTH.

That your Orator have such other and further relief as the equity of this case may require and to your Honors may seem meet and proper, together with the costs of this suit.

SEVENTH.

And your Orator prays that the defendants, and each of them, be required to make full disclosure and discovery of all the matters aforesaid; and according to the utmost and best of their knowledge, information

and belief, full, true, direct and perfect answer make (but not under oath, an answer under oath being hereby waived) to the matters and things hereinbefore stated and charged.

May it please Your Honors to grant unto your Orator a writ of subpoena directed to the said defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, Union Trust Company, John L. Snyder, Julius F. Prah, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, S. Shryock, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschild, S. H. Montgomery, W. A. Noland, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Marvin Martin, and Roy W. Minkler, and each of them,

commanding them on a day certain therein to be named to appear and answer this bill, (but not under oath, answer under oath being hereby waived) and to perform such order and decree in the premises as to the court may seem meet and as may be required by the principles of equity and good conscience.

CHARLES J. BONAPARTE,

Attorney General of the United States.

JOHN McCOURT,

United States Attorney for District of Oregon.

TRACY C. BECKER,

B. D. TOWNSEND,

Of counsel for complainant.